



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR
THOMAS M. MENINO

April 20, 2010

Boston City Council
1 City Hall Square, Suite 550
Boston, MA 02201-2043

Dear Councilors:

The City is in receipt of a copy of the Joint Labor Management Committee panel's award regarding the City of Boston's arbitration with Boston Firefighters, Local 718. The award is attached. We have not received a formal written opinion from the Arbitrator. I will, by law, submit the formal written opinion to you upon receipt.

The panel's award provides a 19% salary increase over four years. This increase is 5% greater than the four-year, 14% wages package successfully negotiated with the other public safety bargaining units. The award will cost taxpayers an estimated \$74 million to fund.

I will provide you a copy of the arbitrator's written opinion when we receive it.

Sincerely,

Thomas M. Menino
Mayor of Boston

AWARD OF THE ARBITRATION PANEL
JLMC Case No. 08-02F

The following Award is in full and final resolution of the JLMC-certified and properly submitted issues presented to the Tripartite Interest Arbitration Panel in JLMC Case No. 08-02F. Unless otherwise specified, the effective date of the amendments to the Agreement under the Panel's Award shall be the date the Panel's Award in JLMC Case No. 08-02F becomes binding upon the parties, pursuant to Chapter 589 of the Acts of 1987^{3/}

The following relates the changes to be made to the Local 718-City of Boston July 1, 2003-June 30, 2006 (FY 2004-FY 2006) Collective Bargaining Agreement ("Agreement"), pursuant to the Award of the Tripartite Interest Arbitration Panel in JLMC No. 08-02F [All sections and subsections of the predecessor Agreement not affected by the Award are to continue unchanged.]:

Duration (Article XXI):

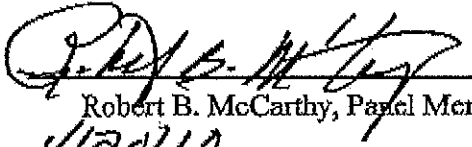
Two (2) successive Collective Bargaining Agreements covering the period July 1, 2006 - June 30, 2010, with the following duration respectively:

1. July 1, 2006 - June 30, 2007 (FY 2007); and
2. July 1, 2009 - June 30, 2010 (FY 2008-2009-2010).

Dates in this Article are to be amended accordingly.


Dana Edward Eischen, Panel Chair

4/20/2010


Robert B. McCarthy, Panel Member - 4/20/10


Dean J. Mazarella, Panel Member

4-20-10 12:58 PM

3/ The phrases "Effective on the date the award is to be implemented" and "the date the award is to be implemented" mean the calendar point that the compensation changes as provided for in Article XX are implemented, including full compliance with all retroactive requirements.

Compensation (Article XX):

Amend Section 1 (base wages) to reflect the following percentage increases on the following dates:

FY 2007 – FY 2008 Contract:

Effective FPP^{1/} FY 2007... plus 2%
Effective FPP FY 2008... plus 2.5%

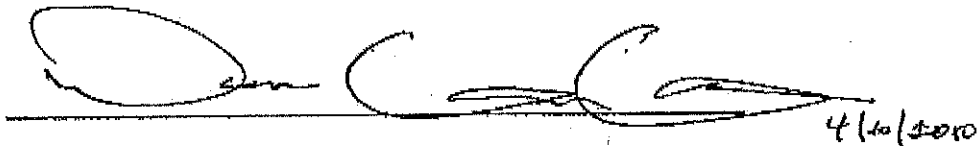
FY 2009 – FY 2010 Contract:

Effective FPP FY 2009... plus 3%
Effective January 1, 2010... plus 3.5%
Effective June 30, 2010... plus 2.5%

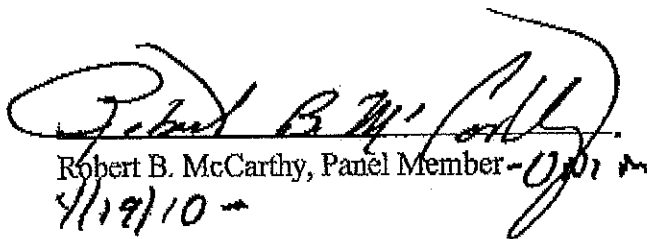
Amend Section 2 Night Differential, Section 3 Hazardous Duty/Specialist Compensation and Section 4 Transitional Career Awards Program to reflect the recalculation of each such benefit based upon the periodic increase to the Section 1 base wages, *supra*, with each recalculation effective on the same dates as the respective increases to the base wage.

Amend Section 3 Hazardous Duty/Specialist Compensation to reflect the following percentage increases on the following dates:

Effective FPP FY 2008... plus 1.5%
Effective FPP FY 2009... plus 1.5%



Dana Edward Eischen, Panel Chair



Robert B. McCarthy, Panel Member - *Opp*
4/19/10 -

Dissent will mail my
Dean J. Mazzearella, Panel Member

objections
dfm 1:00 PM
4-20-10

1/ "FPP" signifies beginning of first payroll period.

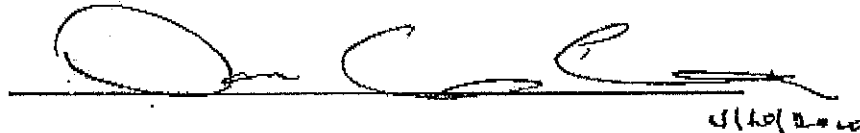
Special Operations Division: Hazardous Materials and Technical Rescue Division

Amend Article XX-*Compensation* by adding as new Section 9 the following:

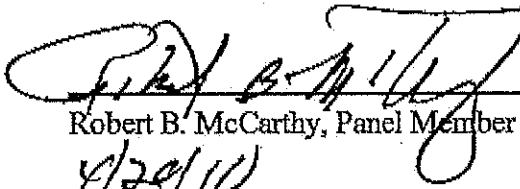
Section 9. Special Operations Division: Hazardous Materials/Technical Rescue

Effective June 30, 2010, all employees assigned to those fire companies which by virtue of comparatively more sophisticated training and more frequent responses concentrate upon hazardous materials and technical rescue public safety activity [five (5) companies concentrating on hazardous materials response and seven (7) companies concentrating on technical rescue response], the field District Chief and Incident Command Technicians [whose duties include supervision of such companies], and Headquarters assigned officers and firefighters whose duties include oversight, training, and support services for such field companies, shall receive a base compensation stipend annually of \$500.00 (for the Technician level) and \$1,000 (for the Advanced Technician level).

This stipend shall be considered as part of the regular weekly base compensation of covered employees for purposes of computing night differential, hazardous duty pay, overtime pay, holiday pay, sick, injured, vacation and other authorized leave compensation, and for pension contribution compensation.



Dana Edward Eischen, Panel Chair



Robert B. McCarthy, Panel Member

4/20/10



Dean J. Mazzearella, Panel Member

4-10-

4-20-10

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Group Health Insurance (Article XIX, Sections 11 and 27)

Amend by deleting existing Section 11 and inserting new Section 11, as follows:

Section 11 Effective 60 days after the JLMC award becomes binding upon the parties pursuant to Chapter 589 of the Acts of 1987, the City shall cease to offer Master Medical to bargaining unit members. Effective that same date, the City shall offer the indemnity PPO known as Blue Care Elect Preferred. The City's rate of contribution for the indemnity PPO shall be 75%. The employee's rate of contribution shall be 25%.

- A. **Effective January 1, 2008** the City's rate of contribution for all approved and authorized health maintenance organizations shall be 87.5%. The employees rate of contribution for all approved and authorized health maintenance organizations shall be 12.5%.
- B. **Effective January 1, 2009** the City's rate of contribution for all approved and authorized health maintenance organizations shall be 85%. The employees rate of contribution for all approved and authorized health maintenance organizations shall be 15%.
- C. **Effective January 1, 2008** the City's rate of contribution for all approved and authorized point of service products shall be 82.5%. the employees rate of contribution for all approved and authorized point of service products shall be 17.5%.
- D. **Effective January 1, 2009** the City's rate of contribution for all approved and authorized point of service products shall be 80%. The employees rate of contribution for all approved and authorized point of service products shall be 20%.

(Note: When the City calculates the retroactive compensation for employees it will reduce the retroactive compensation by an amount equal to the additional retroactive health insurance premiums owned by such employees).

Amend by inserting new Section 27, as follows:

Section 27. Effective on the date an award becomes binding upon the parties pursuant to Chapter 589 of the Acts of 1987, bargaining unit members declining the City's health insurance benefit shall be eligible for the City's opt-out insurance benefit pursuant to the City's health insurance policy. Those bargaining unit members shall receive fifteen hundred dollars (\$1,500) for opting-out of an individual plan or twenty-five hundred dollars (\$2,500) for opting-out of a family plan under the above-mentioned policy.

Eligibility.

To participate employees must have been enrolled or be currently enrolled in medical coverage through the City of Boston for a year and have dropped the coverage;

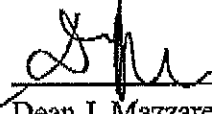
Employees are eligible for the payment if they have coverage under another plan.

Other plans include:

- i. Your spouse's/partner's plan (as long as he or she is covered by someone other than the City of Boston, Boston Water and Sewer Commission or the Boston Public Health Commission);
- ii. A private plan;
- iii. A plan offered through a second employer (if you have another job that provides health care benefits); or
- iv. A retiree health plan from an employer other than one of the City of Boston groups.


Dana Edward Eischen, Panel Chair

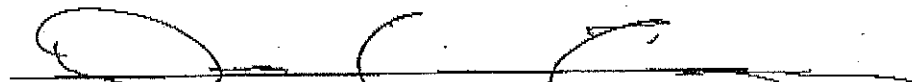

Robert B. McCarthy, Panel Member
4/20/10

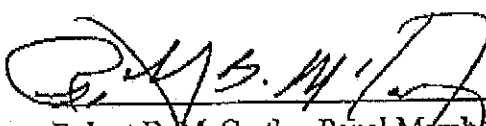

Dean J. Mazzearella, Panel Member
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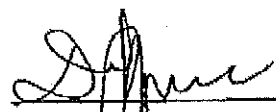
Residency (Article XX)

Amend by deleting existing Section 25 and inserting the following new Section 25:

All members of the bargaining units must be residents of the City of Boston in accordance with the City of Boston's Residence Ordinance (Ord. 1976, c. 9 as amended). After ten (10) years of consecutive full-time service (or, in the case of bargaining unit members who have had a break in service due to work-related disability ten (10) years of full-time service in total) from date of appointment to the bargaining unit, members of the bargaining units will be exempted from the Residency Ordinance (Effective upon issuance of award). (Effective on the date the award is to be implemented).


Dana Edward Eischen, Panel Chair


Robert B. McCarthy, Panel Member
4/20/2010

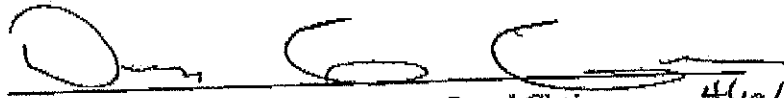

Dean J. Mazzearella, Panel Member
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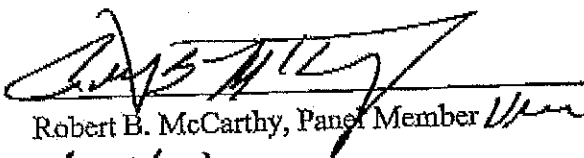
Sick Leave (Article XVII)

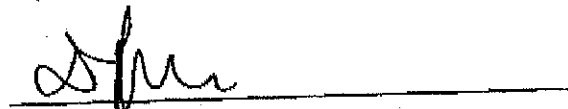
Amend by deleting existing Section 3 and inserting the following new Section 3:

All employees must notify his/her company officer or immediate supervisor of the employee's absence due to illness no later than one (1) hour before the start of his/her tour (work shift) in the case of a day tour, and no later than three (3) hours before the start of his/her tour (work shift) in the case of a night tour, unless such notice is impracticable, in which case the employee must provide notice as soon as is practicable. After consultation with the District Fire Chief, or the rank equivalent, the supervisor shall attempt to contact the employee by telephone to ascertain if the employee can return to full, regular duty on the employee's next regularly scheduled tour of duty (work shift). After sick leave absence of more than two (2) consecutive actual tours of duty (work shifts), the Fire Commissioner can require the involved employee to communicate with the Department Medical Examiner and/or obtain a medical letter from his/her medical provider. After consultation with the employee's medical care provider, the Department Medical Examiner shall determine an employee's return to duty status. Notwithstanding the foregoing two sentences, the Fire Commissioner can require any employee to communicate with the Department Medical Examiner and/or obtain a medical letter from his/her medical provider if said employee has accumulated ten (10) tours or more of undocumented absences within a rolling twelve (12) month period.

No member of the bargaining unit shall be entitled to holiday pay if he or she has an undocumented sick leave on the night before a holiday, on the holiday, or the day after a holiday.


Dana Edward Eischen, Panel Chair 4/16/10


Robert B. McCarthy, Panel Member 4-20-10


Dean J. Mazzearella, Panel Member 4-20-10 1:00 PM

Drug and Alcohol Testing (Article XXII and Appendix F)

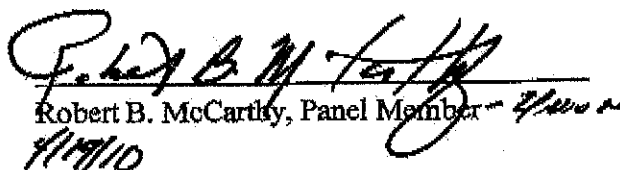
Add the following new Article XXII to the Agreement:

Article XXII Drug and Alcohol Random Testing

Effective on the date the Panel's Award in JLMC Case No. 08-02F becomes binding upon the parties, pursuant to Chapter 589 of the Acts of 1987, but no sooner than July 1, 2010, the "Boston Fire Department /IAFF Local 718 Drug and Alcohol Free Workplace Policy", incorporated by reference herein and appended hereto as "Appendix F" shall become part of the Agreement between the Parties and shall be implemented for members of the bargaining unit(s) covered by this Agreement.



Dana Edward Eischen, Panel Chair


Robert B. McCarthy, Panel Member - 4/20/10
4/20/10
Dean J. Mazzarella, Panel Member

This Policy shall supersede any conflicting policies or practices within the Fire Department but shall be construed and applied in a manner consistent with the Collective Bargaining Agreement, specifically including Article XIX, Section 21 and Article XVI.

BOSTON FIRE DEPARTMENT/IAFF Local 718

**DRUG AND ALCOHOL
FREE WORKPLACE POLICY**

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I. INTRODUCTION

- 1.1 The Boston Fire Department and the Boston Firefighters Local 718 recognize that illegal drug use and abuse/misuse of alcohol by Members of this Department pose a threat to the public welfare and to the employees of the department. Thus, the Department will take the necessary steps, including drug and alcohol testing, to maintain a drug/alcohol free workplace. The goal of this policy is to detect and prevent illegal drug use, controlled substance and alcohol misuse and abuse and to assist in the rehabilitation of Members whenever possible. The following procedures provide the department with reasonable measures to ensure drug and alcohol use does not jeopardize the public or the Department's ability to serve its citizens.

II. EDUCATION

- 2.1 The Department will continue an educational program that addresses all current related substance issues. This educational program will be scheduled at sufficient intervals to ensure that not only are the goals of this Policy met, but that all Members are familiar with the issues, problems and current trends concerning contemporary substance abuse.

III. EMPLOYEE ASSISTANCE PROGRAM

The Boston Fire Department and the Boston Fire Union Local 718 maintain an Employee Assistance Program (EAP) which is available twenty-four (24) hours a day, seven (7) days a week. This program is for the benefit of all Members. Voluntary participation, which is participation because a Member believes he or she may benefit by attending meetings at the EAP, is confidential and is optional for the Member.

IV. CONFIDENTIALITY

- 4.1 The Department shall advise all participants in the collection, testing, and reporting process of their responsibility to protect Member privacy and to maintain the confidentiality of all drug and alcohol test results. The Department shall maintain all correspondence, notes, reports, testing records and other documents pertaining to substance abuse testing in a locked, secure location, and limit access to those records to those with a need to know.
- 4.2 Except as required by law, all information concerning a Member's drug and alcohol tests shall remain confidential for all purposes other than determining and defending disciplinary action.
- 4.3 With the exception of determining and defending disciplinary action or as required by law, all Department personnel shall maintain Member privacy and confidentiality concerning all alcohol and drug test results.
- 4.4 Any Department personnel with access to information about the identity of Members selected for testing and the designated test date and time shall maintain the confidentiality of that information, to avoid any advance notice to the selected Members.
- 4.5 Notwithstanding the foregoing, upon request by the Member or the Member's union representative with written authorization from the Member, the

Department shall provide copies of all laboratory reports, test results, forensic opinions, laboratory work sheets, procedure sheets, and/or laboratory procedures.

V. DEFINITIONS

- 5.1 Controlled Substance - any drug included in Schedules I through V, as defined by Section 802(6) of Title 21 of the United States Code (21 USC 802(6)), the possession of which is unlawful under Chapter 13 of that title, or any drug included within the definition of "Controlled substance" in Chapter 94C of the Massachusetts General Laws (for example, but not limited to: cocaine, marijuana, valium, morphine, anabolic steroids). The term does not include the use of prescribed drugs, which have been legally obtained and are being used by the individual for whom they were prescribed in accordance with the prescription and for the purpose for which they were prescribed.
- 5.2 Illegally-Used or Improperly Used Drugs - any prescribed drug which is legally obtainable but has not been legally obtained or is not being used as originally prescribed, all designer drugs not listed in the Controlled Substances Act (for example, but not limited to: MDA, fentanyl), and any other over-the-counter or non-drug substances (for example, but not limited to: airplane glue) being used for other than their intended purpose.
- 5.3 Alcohol - colorless, volatile and flammable liquid that is the intoxicating agent in fermented and distilled liquors. It includes, but is not limited to, beer, wine and liquor. It does not include alcohol used in chemical processing, cleaning or testing.
- 5.4 Department Property - includes buildings, offices, facilities, equipment, vehicles, land, and parking lots owned, loaned, utilized or leased by the Department. It also includes any other site at which business of the Department is transacted whether on or away from Department owned, loaned, or leased property.
- 5.5 Motor Vehicle Collision - an unplanned, unexpected and unintended vehicle collision involving fire apparatus or any Department owned vehicle which a) occurs on Department property, on Department business, or during working hours, and b) initially appears to have been caused wholly or partially by a member, and c) results in a fatality, a personal injury requiring medical treatment away from the scene or property damage in excess of \$2,500 (except property damage caused by necessary and authorized "squeeze-through" operations).
- 5.6 Drug Paraphernalia - any item that is clearly intended for use for the administering, transferring, manufacturing, testing or storing of a controlled substance.
- 5.7 Reasonable Suspicion of Drug and/or Alcohol Use - the reasonable suspicion standard for drug testing of Members is based upon a specific objective fact(s) and reasonable inferences drawn from that fact(s) in light of experience that the individual may be involved in the use of any illegally-used drug, controlled substance, or alcohol. Examples may include one or more of the following:
- (a) Observable phenomena, such as direct observation of on-duty alcohol use or possession and/or direct observation of on-duty or off-duty use or possession of a controlled substance or illegally-used drug, and/or the on-duty display of behaviors which appear to be indicative of the

use of any illegally-used drug, controlled substance, or alcohol and are not attributable to other factors;

- (b) a pattern of abnormal conduct, erratic behavior or deteriorating work performance, including but not limited to, extended or patterned sick leave use, excessive tardiness, or frequent accidents, not attributable to other factors and which appears to be related to drug and/or alcohol abuse;
- (c) arrest, indictment, or conviction for a drug or alcohol related offense;
- (d) newly discovered evidence that the Member has tampered with a prior drug/alcohol test;
- (e) repeated or flagrant violations of the Department's Rules and Regulations which are determined by a supervisor to pose a substantial risk of injury or property damage and which are not attributable to other factors and appear to be related to drug and/or alcohol abuse;

The above examples are not all inclusive and are intended to be illustrative.

5.8 The Indicators of being affected by a drug or by alcohol are not confined to those consistent with misbehavior, or to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. Although reasonable suspicion does not require certainty, mere "hunches" are not sufficient to meet this standard.

5.9 Under the Influence of an Unauthorized Controlled Substance, Illegally-used Drug and/or Alcohol - The presence of a .04 alcohol content or greater, or a verified positive drug test, at levels specified by the Substance Abuse and Mental Health Services Administration (SAMHSA), for an unauthorized controlled substance or an illegally-used drug.

5.10 Medical Review Officer (MRO) - The Department's Medical Examiner, or his properly certified designee, shall serve as the Medical Review Officer under this policy.

5.11 Member - Any and all individuals represented by the Boston Fire Fighters Local 718 International Association of Fire Fighters.

5.12 The Contractor(s) - A third party contractor(s) that is responsible for administering the Fire Department Alcohol and Drug Testing Program, or any portion thereof. Duties of a contractor may include randomly selecting the Testing groups, collecting specimen at testing sites or other collection locations designated by the Department, storing specimens, and/or performing testing of specimens.

5.13 SAMHSA - The Substance Abuse and Mental Health Services Administration

VI. AUTHORIZED USE OF PRESCRIPTION MEDICINE

6.1 Members undergoing prescribed medical treatment with any drug must inquire of their medical provider whether such drug can potentially affect the member's ability to perform the job safely. If advised that such drug can potentially affect the member's ability to perform the job safely, or if the medical provider is uncertain about the drug's potential impact on the member's ability to perform

the job safely, the member must immediately report the drug prescribed to the Fire Department's Medical Office and a determination will be made as to the Member's ability to perform his duty.

VII. PROHIBITED CONDUCT

The following conduct by Members is prohibited:

- 7.1 Unauthorized use, possession, manufacture, distribution, dispensation or sale of a controlled substance, illegally-used drug, drug paraphernalia, or alcohol on Department property, on Department business, in Department supplied vehicles, or vehicles being used for Department purposes, or during working hours;
- 7.2 Use of alcohol at any time while in the Department Uniform, except for special events for which the Chief of the Department has designated an exemption to this rule;
- 7.3 Unauthorized storage in a desk, locker, or other repository on Department property of any illegally-used drug, controlled substance, drug paraphernalia, or alcohol;
- 7.4 Possession of any illegally-used drug, controlled substance, drug paraphernalia, or an open container of alcohol in a vehicle used by a Member when such vehicle is located on Department property;
- 7.5 Being under the influence of an unauthorized controlled substance, illegally-used drug or alcohol on Department property, on Department business, in Department supplied vehicles or vehicles being used for Department business or during working hours;
- 7.6 Possession, use, manufacture, distribution, dispensation or sale of illegally-used drugs or controlled substances while off duty;
- 7.7 Intentionally diluting a urine or breath sample;
- 7.8 Refusing consent to testing or refusing to submit a breath or urine sample for testing;
- 7.9 Failing to adhere to the terms of any Rehabilitation Agreement (sample attached) which the Member has signed;
- 7.10 Arrest or conviction under any drug or alcohol statute;
- 7.11 Failure to immediately notify the Department of any arrest or conviction under any drug or alcohol statute;
- 7.12 Failure to comply with Section 6.1.
- 7.13 Refusing to sign a) a receipt for the Department's Substance Abuse Policy, b) the Consent and Release Form, c) the Chain of Custody Form, or d) a Rehabilitation Agreement.

VIII. REHABILITATION

- 8.1 Rehabilitation Program - A Member may be directed to participate in a mandatory rehabilitation program by the Commissioner, the Department's Medical Examiner, or the Department's EAP Coordinator. Members may also self-refer to the Rehabilitation program. This section applies to both circumstances. Members who enter an inpatient drug or alcohol rehabilitation program must sign the Rehabilitation Agreement in Appendix A. The Member will be required to attend meetings of the EAP sponsored by the Boston Fire Department and Local 718 and will be required to follow the directives established by the Coordinator of this program for a period of one (1) year following the date of his entrance into the Rehabilitation Program. Members who are participating in the Rehabilitation Program may be tested for the presence of drugs or alcohol at any time while enrolled in the program. Additionally, the Department Medical Examiner may require that a Member complete a medical evaluation during this rehabilitation period.
- 8.2 If a Member cannot make a meeting for emergency reasons only, he or she must call in by telephone (773-5529 or 343-3784). If a Member attends any rehabilitation meetings other than those at the EAP quarters, the Member must get prior written approval from the EAP program coordinator. The Member must catalog all substance abuse meetings that he attended, including the name of the group conducting the meeting and the meeting place. The Member shall provide such information to the EAP Program Coordinator.
- 8.3 Leave of Absence - As part of a rehabilitation program, the Department may grant a Member a leave of absence for the purpose of participating in a rehabilitation program that has been approved by the Boston Fire Department's EAP Coordinator. The Member shall authorize his treatment provider to communicate with the EAP Coordinator for the purpose of confirming that the Member is participating in the program and has adhered to all of the program's requirements. The Member will be responsible for any costs associated with his rehabilitation program that are not covered by his health insurance provider. The Member will be allowed to use his available leave balances in order to receive pay during this leave of absence. In the event that the Member does not have sufficient leave then he will be placed on an unpaid leave of absence. Prior to the Member's return to the Department, the Member must submit to Department administered drug and alcohol testing, and test negative for drugs and alcohol in accordance with the standards in this Policy. Additionally, the Member must be cleared to return to duty by the Department's Medical Examiner.

IX. TYPES OF TESTING

- 9.1 Drug tests will consist of determinations of the presence of controlled substances, illegally used drugs and alcohol as defined in Section II. Members of the Boston Fire Department will be tested for drugs and/or alcohol under the following circumstances:
- (a) Random Testing - In a joint desire to achieve and maintain a work force that is 100% drug and alcohol free and in further recognition that the Department has not yet achieved such goal, the Parties agree that the Department will implement and maintain a random drug and alcohol testing program. This program will include urinalysis and breath alcohol testing.

- (b) Reasonable Suspicion of Drug and/or Alcohol Use - A Member will be tested for drugs and/or alcohol when a supervisor makes a determination based on reasonable suspicion. Referrals for reasonable suspicion testing will be made using the procedures set forth in XI, 11.1.
- (c) Medical Clinical Observation - A Member will be tested for drugs and/or alcohol when the Department's Medical Examiner makes a determination, based on his direct observation, that the Member may be under the influence of alcohol or drugs in violation of this policy.
- (d) Follow-up Testing - Any Member who has tested positive for alcohol or drugs in violation of this policy will be subject to unannounced follow-up testing for thirty-six months following the date of return to duty.
- (e) Probation Period Testing - All Probationary personnel are subject to drug and alcohol testing during their probation period without prior warning and at random intervals. Members who test positive for drugs or alcohol during their probationary period will be subject to termination.
- (f) Condition of Permanent Promotion/Appointment - Members who are offered and accept a promotion/appointment to the permanent positions of Lieutenant, Captain, District Chief and Deputy Chief in the uniform division of the Department, or to the positions of Senior Fire Alarm Operator, Principal Fire Alarm Operator, Assistant Superintendent of Fire Alarm and Superintendent of Fire Alarm in the Fire Alarm division of the Department will be required to submit to alcohol and drug testing. A negative test result shall be a condition of such promotion. An employee can decline to be tested and, upon an employee's exercising such option, the employee shall forego the promotion in issue; however, such employee shall not be regarded as having refused to be tested for any other purpose or provision of this Policy, nor shall such declining constitute a basis for reasonable suspicion drug or alcohol testing.
- (g) Return from Suspension - Members, who have been suspended for a violation of this Policy, will be required to submit to Department administered drug and alcohol testing, and must test negative for drugs and alcohol in accordance with the standards in this Policy, prior to his return to the Department. Additionally, prior to returning to work the Member must be cleared to return to duty by the Department's Medical Examiner.
- (h) Motor Vehicle Collision - Members who are driving fire apparatus or any Department owned vehicle which is involved in a motor vehicle collision, as defined in V. §5.5, supra, will be required to submit to alcohol and drug testing.

X. POLICY ENFORCEMENT

10.1 The following section applies only to those Members of the Department who have not tested positive for drugs or alcohol in violation of this Policy at any point in his or her career and who are participating in the Department's Rehabilitation Program ("the Program") either on a mandatory basis or as a matter of self-referral:

- (a) A Member who has been directed by the Department to participate in the Program or has self-referred to the Program but has not violated any provision of this Policy shall not be subject to disciplinary action.
- (b) If a Member, who is participating in the Program, fails to follow the guidelines of his rehabilitation program he or she shall be suspended for a period of five (5) days. Additionally, the Member will be required to participate in the Program for one (1) year from the date of his return from the five (5) day suspension.
- (c) If a Member, who is participating in the Program, fails to follow the directives of his rehabilitation program for a second time he or she shall be suspended for a period not less than thirty (30) days. Additionally, the Member will be required to participate in the Program for one-year from the date of his return from the thirty (30) days suspension.
- (d) If a Member, who is participating in the Program, fails to follow the directives of his Rehabilitation Program for a third time, the Member shall be terminated.

10.2 The following section applies to those Members of the department who have tested positive for drugs or alcohol in violation of this Policy at any point in his or her career:

- (a) If a Member tests positive for drugs or alcohol for the first time, but has not violated any other provision of this Policy, the Member shall be suspended for a period of thirty (30) days.
- (b) If a Member tests positive for drugs or alcohol for the first time, he or she shall be required to participate in the Department's Rehabilitation Program.
- (c) If a Member has violated other provisions of this policy, in addition to testing positive for drugs or alcohol, he or she may be subject to disciplinary action in excess of thirty (30) days and which may, depending upon the severity of the violation, include termination.
- (d) If a Member tests positive for drugs or alcohol a second time the Member shall be terminated.
- (e) If a Member, who has tested positive for drugs or alcohol, fails to follow the terms and conditions of his or her rehabilitation agreement the member may be terminated.

- (f) If a Member, who tested positive for drugs or alcohol in violation of this Policy, tests positive for either drugs or alcohol a second time, regardless of whether the second positive test corresponds to the substance that gave rise to the first positive test, the Member shall be terminated.
- 10.3 If a Member switches or adulterates a urine or breath sample during the testing process, the Member shall be treated as if s/he tested positive.
- 10.4 If a Member is on the tour report for a work location that has been selected for testing, and the Member leaves the worksite, without authorization, and without complying with the requirement to be tested, the Member shall be treated as if he tested positive.
- 10.5 Nothing in this Policy will limit the Commissioner's authority to impose discipline for violation of the Rules and Regulations of the Department not included in this Policy.

XI. PROCEDURES FOR DRUG TESTING

11.1 Referral Procedure for Supervisors for Reasonable Suspicion

The Department's supervisors are responsible for being alert to declining job performance, erratic behavior or other indicators of possible illegal drug use, controlled substance abuse or alcohol use or abuse. Whenever a supervisor makes a determination of reasonable suspicion of drug and/or alcohol use (as defined in Section II of these procedures) the following steps will be taken:

- (a) The supervisor will immediately document in writing all circumstances, information and facts leading to and supporting his/her suspicion. At a minimum, the report will include appropriate dates and times of suspect behavior, reliable/credible sources of information, rationale leading to referral for testing and the action(s) taken.
- (b) Prior to referring a Member for testing, the supervisor will discuss the problem with the Member in a private location with one (1) witness, preferably another supervisor, present. Caution will be taken not to accuse the Member of substance abuse, but the Member will be presented with instance(s) of questionable behavior or other indicator(s). If the Member does not have an acceptable explanation for his questioned behavior or the presented indicator(s), the supervisor will continue with the procedures set forth in this section. The Member may request the presence of a union representative during this meeting; however, the inability to secure a union representative shall not unduly delay the meeting.
- (c) The supervisor shall consult with a second supervisor of a higher rank and they shall jointly decide whether to refer a Member for testing. The on-duty Deputy Chief will make the final determination.
- (d) Once a determination has been made to refer a Member for testing, the Deputy Chief will advise the Member of such decision and notify the on call EAP Coordinator, who will respond to that location and escort the Member to a collection site. The EAP Coordinator should remain with the Member at the collection site until testing is concluded. In the event that leaving the scene and/or remaining with the member is not

feasible, the EAP coordinator will 1) arrange transportation to the collection site (the Member will be instructed not to drive a vehicle), 2) notify the collection site that the Member is being sent for testing, 3) request that the collection site notify the supervisor when collection procedures are completed, 4) arrange transportation for the Member following the collection process, and 5) notify the Member that he or she is not to return to work pending receipt of the test results by the Medical Review Officer.

- (e) Upon conclusion of the testing the EAP Coordinator will ensure that the Member is escorted to his destination. The EAP Coordinator will direct the Member not to drive himself to his destination. The Member will be relieved from duty and placed on administrative leave with pay pending receipt by the Office of Medical Examiner of the test results and the Member will be notified of this change in status.
- (f) In those cases where the supervisor has reasonable suspicion to believe the Member is impaired, the Member will be immediately removed from the work site and shall be placed on administrative leave with pay pending the outcome of the test.
- (g) In those cases where a supervisor discovers a Member who possesses what appears to be a controlled substance, illegally-used drug or alcohol, or drug paraphernalia, he or she will proceed as described above for instances where reasonable suspicion exists, and, if the substance in question appears to be a controlled substance or illegally-used drug, will report the matter to the Boston Police Department immediately and to the Deputy Chief for disciplinary action.

11.2 Procedures for Random Testing

- (a) Random on-duty testing will be conducted throughout the year, although the days of the week and the times of the day when testing is conducted and the number of Members tested in any given week will vary.
- (b) The Department shall create a list of work locations and work groups that will be subject to random testing. Each member will be assigned to one testing group based of his her work location or work group. Each identified group will be known as a "Testing Group." For example, the Department may create a Testing Group by identifying particular fire houses, pieces of equipment, or combinations thereof, together with a particular work group assigned to that house or equipment. The Department may combine locations or pieces of equipment to create a Testing Group. The Department shall determine the site of testing in circumstances where a Testing Group combines Members from more than one location. The Department shall attempt to create Testing Groups of relatively the same number of members, but the actual composition of each Testing Group shall be at the Department's discretion. The Department may create Testing Groups at Fire Department Headquarters at its discretion. Members on modified duty shall be included in Testing Groups.
- (c) The Department will give the Union thirty (30) days notice of the creation the testing initial testing groups, with an opportunity for the Union to comment on the groups. The Department may change or

modify Testing Groups at its discretion, provided it gives the Union thirty (30) days notice of such change.

- (d) The Department shall use an established Independent third-party contractor(s) which has clients subject to USDOT-regulated testing ("Contractor") to select the Testing Groups subject to testing and administer the testing process. The Department shall give the Contractor a list of the Testing Groups and a schedule indicating when the work groups for each Testing Group are on duty. The contractor shall independently determine the dates and times of testing. The Contractor shall design the testing program such that number of drug and alcohol tests each year is, in the case of each type of test, at least equal to 50% of the total number of Members, as of July 1. Weekly, the Contractor shall generate a list ("list") of Testing Groups, using a scientifically valid, tamper-resistant, computer-generated random number selection method. This list will be in effect for a seven (7) day period from Monday through Sunday. During the week for which it is generated, the Contractor shall not provide the Department with a copy of the list.

- (e) The following process shall be repeated on each day in which the Department conducts random testing:

The Contractor shall advise the Department's EAP Coordinator of the Testing Group(s) selected for random testing and the dates and times of such testing. Subject to the operating needs of the Department, all of the Members of the selected Testing Group shall be tested. If a Testing Group is not on duty on a particular day, the Testing Group will remain on the list for the duration of the seven (7) day period that the list is effective, and may be tested the next time that Testing Group is on duty.

- (f) Once the EAP Coordinator has been informed by the Contractor that testing will be conducted on a given day the EAP Coordinator will inform the Deputy Chief of Personnel. The Deputy Chief of Personnel will then inform the Division Commander. In the event that the EAP Coordinator is unable to contact the Deputy Chief of Personnel, he shall directly contact the Division Commander.

- (g) The EAP Coordinator will obtain copies of the tour reports for the Testing Groups to be tested, in the following manner:

- (i) During office hours Monday through Friday, he will contact the Chief of Personnel or his designee for the tour report(s) for the location(s) to be tested.

- (ii) During evening hours, weekends and holidays, he will contact the District Chief for the location to be tested and obtain copies of all the tour reports for that district.

- (h) The EAP Coordinator will meet the Contractor at the first selected Testing Group site with the tour reports for the Testing Group to be tested. The EAP Coordinator will contact the District Chief for the selected Testing Group and request that the District Chief meet him at the testing site. The EAP Coordinator will be present at all testing sites to serve as the Department liaison to the Contractor.

- (i) As soon as practicable after the Contractor arrives at the site, but not before the Members on the tour report for duty, the District Chief shall inform the company officer(s) that the Member(s) on duty will be tested on that tour. The officer(s) shall then inform the Member(s) that the Member(s) will be tested on that tour. Where a Testing Group consists of Members from more than one location, the District Chief shall inform the company officer(s) of the location that is not the testing site that the Member(s) on duty will be tested on that tour and must immediately travel to the test site. The officer(s) shall then inform the member(s) that the Member(s) will be tested on that tour, and the officer(s) shall accompany the Member(s) to the test site. All Members of a Testing Group on duty, regardless whether a Member in another Testing Group has swapped into that group for the shift and regardless of whether a Member from another Testing Group has been detailed into that Testing Group or is otherwise working in that Testing Group that day, shall be tested when a Testing Group is selected for testing. The fact that a Member from one Testing Group was subject to testing while swapping into, being detailed into or otherwise working in another Testing Group on the day such other Testing Group was tested will not excuse the Member from random testing in that Member's own or any other Testing Group when his/her own group, or any group into which s/he swapped or was detailed or otherwise assigned, is tested.
- (j) If a Testing Group consists of Members assigned to fire suppression equipment, the particular fire house(s) subject to testing will be placed out of service for the duration of the testing process.
- (k) A Member who is on the tour report working that tour whose Testing Group is selected for testing on the date designated by the Contractor will not be excused from testing, will not be allowed to reschedule testing, nor will the Member be allowed to take sick time or leave work to avoid testing. If such a Member leaves the worksite, without authorization, without complying with the requirement to be tested, the Member shall be treated as if he tested positive for a controlled substance in accordance with Article X of this policy.
- (l) If a selected location is at an active incident, the Department will delay testing until the Incident is cleared and the unit(s) has returned to its assigned work location. All random testing shall be scheduled with due consideration for the operational needs of the Department.
- (m) The Contractor will collect specimens at the test site, or, where it deems appropriate, at any other test site designated by the Department.

11.3 Collection, Testing and Storage of Specimen

- (a) When conducting testing for prohibited drugs the Department will use urine screening. When conducting testing for alcohol use the Department will use breath alcohol testing. The designated collector shall collect one urine sample from the Member at the time he collects the breath sample for alcohol testing. The designated collector shall take reasonable measures to provide the Member with privacy while maintaining the integrity of the testing.
- (b) The designated collector shall divide the urine sample into two (2) containers, one for testing and the other for potential re-testing. The

Member will place a signed and dated seal over the cap of the specimen containers, place the sealed containers in an envelope, seal the envelope and then sign across the seal. In the event the Member cannot produce sufficient urine for a split sample (a total of 45 milliliters, 30 for the tested sample, 15 for the untested sample) the specimen collector shall document the inability to produce a sufficient sample. An attempt should be made to have the Member produce a sufficient specimen in accordance with procedures defined by the Contractor. A Member who has not produced a sufficient specimen after three hours shall be referred to the Department's Medical Review Officer for evaluation in accordance with Section 11.5.

- (c) The designated collector shall retain the samples to ensure chain of custody from the collection site to the location where the Contractor will conduct the actual test.
- (d) In the case of random testing, the Contractor shall test the sample for the presence of these five drugs, classes of drugs, or their metabolites: marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines. In the course of testing for Reasonable Suspicion of Drug and/or Alcohol Use, other drugs or their metabolites may be tested for if their particular use is suspected. The Contractor shall conduct an initial test on the urine sample, as well as a confirmatory test on each urine sample that yields a positive result.
- (e) The Department will direct the Contractor to store all confirmatory positive urine samples in an appropriate, properly secured location.
- (f) Breath Alcohol tests will be conducted by a properly qualified test operator using an Evidential Breath Testing device (EBT). A positive test will be followed by a second confirmatory EBT test. The Department will direct the Contractor to store breath alcohol results at a level of .04 or greater, in an appropriate, properly secured location.
- (g) The Contractor shall utilize a laboratory certified by SAMHSA and using SAMHSA standards to conduct the test on the urine sample.

11.4 Testing of Divided Sample

- (a) A Member who tested positive for a controlled substance(s)/illegal drug(s) may, within seventy-two (72) hours of being informed of the test result, make a written request to have the untested sample submitted for testing. The Member may have the untested sample tested by the same laboratory as the initial sample, or the Member may select an alternative laboratory. The alternative laboratory must be certified by SAMHSA and must apply the same testing levels. The untested specimen must be transported directly from the Contractor to the alternative laboratory and the Member must pay any associated costs for this additional test. The Member must authorize the alternative laboratory to provide the test results directly to the Department's Medical Review Officer.

11.5

- (a) In the event that a Member does not provide a sufficient breath sample for alcohol testing, or a sufficient urine sample for drug testing, the designated collector will refer the Member to the Medical Review Officer. If the Medical Review Officer determines the Member has a valid reason for his inability to provide a sufficient sample, then the Medical Review Officer shall have the discretion to order additional testing to secure a valid sample. If, after consulting with the Member's medical care provider, the Medical Review Officer finds no valid reason for the Member's inability to provide a sufficient sample, then the Member shall be treated as if he tested positive.
- (b) If the Contractor informs the Medical Review Officer that a Member provided a diluted sample, then the Medical Examiner Officer shall have the discretion to order additional testing to secure a valid sample.

11.6 Procedure Upon a Positive Test Result

Upon a final positive test result, after either reasonable suspicion or random testing, the MRO shall meet with the involved member. Such meeting shall provide the member with the opportunity to discuss alternative causes for the positive test. The final decision about the test result shall be made by the MRO.

XII. UNION REPRESENTATION

- 12.1 Any Member ordered to undergo alcohol and drug tests under this Policy may request the presence of a union representative during the test. However, the inability to secure a union representative shall not unduly delay administration of the test, and the union representative shall not interfere with the privacy and integrity of the testing process as prescribed by the Contractor.
- 12.2 At any time, the Union, upon request, will have the right to inspect and observe any aspect of the drug and alcohol testing program with the exception of individual test results, so long as such inspection and observation do not interfere with the drug and alcohol testing program. The Union may inspect individual test results if the release of this information is authorized by the Member involved.

APPENDIX A**Boston Fire Department Rehabilitation Agreement**

I, _____, enter into this Rehabilitation Agreement with the Boston Fire Department and agree to comply with the terms and conditions listed herein:

I agree to remain substance free for the duration of this agreement. This includes refraining from the use of controlled substances, illegally-used or improperly used prescription drugs, or alcohol.

I agree that I will comply with all of the terms of the Boston Fire Department's Drug and Alcohol Free Workplace Policy (The Policy).

I agree that I may be tested for the presence of drugs or alcohol at any time for the duration of this agreement. I understand that this testing is in addition to the regular random drug testing program for all Members.

I agree that if I have ever tested positive, or if I ever do test positive, for the presence of drugs or alcohol in violation of the Policy, I will be subject to unannounced drug and alcohol testing for thirty-six months from the date of my return to duty.

I understand that I must attend regular meetings, administered by the Boston Fire Department Employee Assistance Program (EAP), in accordance with the schedule outlined below:

1. Months One, Two and Three

- a) attend a minimum of three (3) substance abuse meetings per week for the first three (3) months; and
- b) visit the EAP office twice per week
- c) If a member attends the substance abuse meeting that is held at EAP quarters, it will constitute one (1) meeting per month.

2. Months Four, Five and Six

- a) attend a minimum of three (3) substance abuse meetings per week; and
- b) visit the EAP office once per week

3. Months Seven, Eight and Nine

- a) attend a minimum of three (3) substance abuse meetings per week; and
- b) visit the EAP office once every other week

4. Months Ten, Eleven, and Twelve

- a) attend a minimum of three (3) substance abuse meetings per week; and
- b) visit the EAP office once per month

I agree that in the event I cannot attend a meeting for emergency reasons only, I will contact the EAP by telephone at (617) 773-5529 or (617) 343-3784. If I attend any rehabilitation meetings other than those at the EAP quarters, I will get prior approval from the EAP program coordinator. I will maintain a catalog of all substance abuse meetings that I attend, including the name of the group conducting the meeting and the meeting place. I will provide this information to the EAP Program Coordinator.

I understand that if I have been granted a leave of absence for the purpose of participating in a rehabilitation program, then prior to my return, I must submit to a Department administered drug and alcohol test, and test negative for drugs or alcohol in accordance with the standards in this policy. Additionally, I must be cleared by the Department's Medical Examiner to return to duty.

I understand that if I am suspended for any reason during the length of this agreement (separate from any initial thirty day suspension if I have tested positive for drugs or alcohol for the first time), a new twelve (12) month rehabilitation agreement will start upon my return from the suspension.

I understand that failure to follow the terms and conditions of this Rehabilitation Agreement will result in disciplinary action in accordance with Article X of the Department's Drug and Alcohol Free Workplace Policy.

By affixing my signature below, I hereby agree to the terms of this Agreement and state that I have freely, knowingly, intelligently, and voluntarily entered into this Agreement. I also acknowledge that I was given and exercised a full opportunity to consult with my Union representatives, to review the terms and conditions of this Agreement, and was fairly represented by the Union at all times during the negotiation of this Agreement and its terms.

DATED: _____